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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS E. PIMENTEL,

Defendant and Appellant.

B213006

(Los Angeles County
Super. Ct. No. BA308051)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Julius M. Title and Curtis B. Rappe, Judges. Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

This case is before us for a second time. Pimentel was charged by amended information with possession for sale of cocaine base (Health & Saf. Code, § 11351.5)¹ (count 1), cocaine (§ 11351) (count 2), methamphetamine (§ 11378) (count 3), and marijuana (§ 11359) (count 4). He pleaded not guilty and was tried by a jury. After the jury deadlocked on all four counts, the trial court declared a mistrial. Pimentel was then retried.

According to the evidence adduced at the second trial, on the evening of August 22, 2006, Officer Annette Razo and Detective Erik Armstrong of the Los Angeles Police Department were conducting an undercover narcotics surveillance at the corner of Slauson and Duarte Streets in Los Angeles. From their unmarked police car they saw Pimentel sitting in a chair outside a motorhome that was parked on the street. Using binoculars, Officer Razo watched Pimentel go in and out of the motorhome several times over a 15-minute period. She then noticed a dark sedan pull up next to the motorhome. The driver emerged and handed Pimentel some money. Pimentel went to the back of the motorhome, reached through a window and retrieved a small item that he gave to the driver.

Officer Razo concluded that a narcotics transaction had occurred and signaled her back up officers for assistance. Back-up officers arrived and were joined by Officer Razo and Detective Armstrong. As the officers approached, Pimentel left his chair, went to the back of the motorhome, and tossed a pill bottle through the window. Detective Armstrong looked through the window and saw an open-shoebox on a bed. The shoebox contained what appeared to be a variety of narcotics. Detective Armstrong and another officer recovered the shoebox by climbing through the window to avoid two hostile dogs chained at the motorhome entrance. Inside the shoebox were a large plastic baggie, two pill bottles, 65 small baggies containing marijuana, a pay/owe sheet, and \$89 in cash. The large plastic baggie contained 40 small baggies of crystal methamphetamine. One pill bottle contained nine small baggies of powder cocaine, and the other pill bottle

¹ Undesignated statutory references are to the Health and Safety Code.

contained 10 small baggies of rock cocaine. Officers also recovered a handgun. Pimentel admitted he owned the handgun and the motorhome; both were registered to him. Pimentel denied the narcotics were his.

At the conclusion of the second trial, the jury convicted Pimentel on all four counts of possession for sale. The trial court imposed a state prison sentence of three years, consisting of the three-year lower term on count 1 (cocaine base), plus the lower terms of two years on count 2 (cocaine), 16 months on count 3 (methamphetamine) and 16 months on count 4 (marijuana) to be served concurrently to the term imposed on count 1 for possession for sale of cocaine base.

In Pimentel's initial appeal we held the trial court abused its discretion in determining Pimentel had failed to articulate the necessary factual scenario to establish a plausible foundation for his allegations of police misconduct under *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1016, 1024-1025 and *People v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We reversed the judgment and remanded the matter for the trial court to conduct an in camera review of the requested personnel files of Officer Annette Razo and Detective Erik Armstrong for relevance with respect to complaints concerning false charges or reports, fabrication of evidence, dishonesty or moral turpitude. If the trial court's review on remand revealed no relevant information, the trial court was to reinstate the judgment of conviction. If the review reveals relevant information, the trial court was to order disclosure, allow Pimentel an opportunity to demonstrate prejudice and order a new trial if there were a reasonable probability the outcome would have been different had the *Pitchess* information been disclosed. If no prejudice was shown, the trial court was to reinstate the judgment of conviction. (*People v. Pimentel* (Dec. 17, 2007, B197662 [nonpub. opn.]).)

On remand, the trial court reviewed the potentially responsive documents in an in camera hearing outside the presence of all persons except the custodian and his counsel and ordered disclosure of certain documents relating to complaints of false charges or reports, fabrication of evidence, dishonesty or moral turpitude. The documents were ordered disclosed under a protective order and the hearing transcript was ordered sealed.

Thereafter, the court conducted a hearing involving the testimony of the complaining witnesses named in the documents. At the conclusion of the hearing, the trial court determined Pimentel had failed to show there was a reasonable probability the verdict would have been different had the *Pitchess* information been disclosed prior to trial.

We appointed counsel to represent Pimentel on this second appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On April 30, 2009, we advised Pimentel he had 30 days within which to personally submit any contentions or issues he wished us to consider. We have received no response to date.

We have examined the entire record, and the record of the first appeal, and are satisfied Pimentel's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

WOODS, J.

We concur:

PERLUSS, P. J.

ZELON, J.